PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number:	10/678,400
Filing Date:	October 3, 2003
Applicant(s):	Robert M. Congdon and Wei-Lee H. Jamrog
Entitled:	N-TIER CONFIGURED IMAP SERVER
Examiner:	Hussein A. El-Chanti
Group Art Unit:	2157
Attorney Docket No.:	LOT920030027US1 (7321-012U)

REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Reply Brief is submitted under 37 C.F.R. § 41.41 in response to the EXAMINER'S ANSWER dated July 22, 2008.

The Examiner's response to Appellant's arguments submitted in the Appeal Brief of June 2, 2008, raises additional issues and underscores the factual and legal shortcomings in the Examiner's rejection. In response, Appellant relies upon the arguments presented in the Appeal Brief of June 2, 2008, and the arguments set forth below.

In response to the arguments presented on pages 4 through 6 of the Appeal Brief in which Appellants asserted, " Nowhere in DeAnna is there a teaching directed to a "logical grouping of

application server nodes" that are both "disposed" and "executing" within an application server", the Examiner asserted the following on pages 7 and 8 of the Examiner's Answer.

> DeAnna teaches a system and method including a ZDF server 50 that includes a plurality of applications 171-184 operating on the server 50 (see fig. 4 and col. 15-18). Each of the applications that are operating on the same server is interpreted to be "application server nodes".

Thus, Examiner has expressly construed the claim term "application server node disposed and executing within an application server" to mean "applications operating on a server". Examiner's claim construction is flawed. Specifically, during patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification."[1] The Federal Circuit's en banc decision in Phillips v. AWH Corp.[2] expressly recognized that the United States Patent and Trademark Office employs the "broadest reasonable interpretation" standard.

The term "application server" is a term well understood in the art. A simple search engine query for "application server" will result in numerous documents providing a consistent understanding of the meaning of the term "application server". For example, Wikipedia describes an application server as

> In n-tier architecture an application server is a server that hosts an API to expose Business Logic and Business Processes for use by other applications.

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[1] M.P.E.P. 2111.

[2] 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005)(The Patent and Trademark Office ("PTO") determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art." In re Am. Acad. of Sci. Tech. Ctr., 367 F.3d 1359, 1364[, 70 USPQ2d 1827] (Fed. Cir. 2004). Indeed, the rules of the PTO require that application claims must "conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description." 37 CFR 1.75(d)(1).)

Appellants' usage of the term "application server" is consistent with the understood meaning of "application server". Specifically, paragraph [0022] of Appellants' published specification is reproduced herein as follows:

> [0022] FIG. 1 is a block diagram of an application server 100 hosting an IMAP server 145 disposed within a collaborative messaging application 130 in accordance with the present invention. The application server 100 can include an enterprise bean container 115 in which enterprise beans can be disposed for use by client processes both internal and external to the application server 100. In this way, the application server 100 can support the deployment of business logic in a highly scalable, n-tier enterprise application.

Examiner, however, unfairly and inappropriately extends the meaning of application server to merely a "server". Examiner's improper claim construction of "application server" exceeds the bounds of the law by providing a broader than reasonable interpretation of a critical claim element inconsistent with the usage of the claim term "application server" within Appellants' specification.[3]

In response to the arguments presented on page 6 of the Appeal Brief in which Appellants asserted, "[N]owhere in DeAnna can a teaching be found directed to the coupling of an IMAP server to the logical grouping of the nodes", the Examiner asserted the following on page 7 of the Examiner's Answer.

> [A]pplications 173 and 175 are also logically connected to other applications "application server nodes" such as application Mailprocessor 174, Timer 171, and ReceiverMDB 172. ReceiverMDB 172 stores that received messages. Therefore application 172 is interpreted to be "data store for storing electronic messages". Also MailprocessorMDB 174 is logically connected to mailreceiver 172 to receive and process the received messages (see col. 15 lines 55-67). Therefore applications 171, 174, and 172 are interpreted to be a portion of "logical grouping of application server

[3] In re Schreiber, 128 F.3d 1473, 1477 (Fed. Cir. 1997) ("To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently"), In re Rijckaert, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); Perkin-Elmer Corp. v. Computervision Corp., 732 F.2d 888, 894, 221 USPQ 669, 673 (Fed. Cir. 1984).

> nodes" that are logically connected to the Mailsender 175 and Mailreceiver 173 "IMAP compliant mail server".

Again, Examiner inappropriately construes the claim term "logical grouping of nodes" to mean "applications". The plain meaning of "application server node" is a "node of an application server". Appellants' use of the term "application server node" is consistent with the plain meaning ascribed herein as evidenced by paragraph [0011] of Appellants' published specification in which it is stated, "[A] mail server cell can include a logical grouping of application server nodes disposed within the application server". Examiner in applying a claim construction of "application" to "application server node" not only has applied a broader than reasonable interpretation to "application server node", but has physically assigned absolutely no meaning to the words "server node" in applying Examiner's claim construction.

For the reasons set forth in the Appeal Brief, and for those set forth herein, Appellants respectfully solicit the Honorable Board to reverse the Examiner's rejection under 35 U.S.C. § 102(e).

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 12-2158, and please credit any excess fees to such deposit account.

Date: September 22, 2008

Respectfully submitted,

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